

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Commerce Division of Unclaimed Funds

Regulation/Package Title: Unclaimed Funds January 2018 Filings

Rule Number(s): 1301:10-3-04 ("Examination of accounts")

Date: August 14, 2017

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

OAC 1301:10-3-04, "Examination of Accounts"(Amend) – This rule sets out the process for the examination of holders required to report unclaimed funds pursuant to ORC §§169.01, 169.02 and 169.03. Holders are required to report annually to the Ohio Division of Unclaimed Funds ("Division") pursuant to ORC §169.03, whether or not they have unclaimed monies to remit to the Division. Ohio law defines "holder" broadly in ORC

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§169.01(D) and OAC 1301:10-1-01(E). Ohio law also authorizes the Director of Commerce to “at reasonable times and upon reasonable notice, examine or cause to be examined, by auditors of supervisory departments or divisions of the state, the records of any holder to determine compliance” with ORC Chapter 169. ORC §169.03(F)(1). For example, a holder could have unpaid employee wages reportable pursuant to ORC §169.02(N) one year from the date payable to the employee. In response to holder inquiries since the rule was last reviewed, an amendment is proposed to add language to clarify various aspects of the holder examination process:

- Section (E)(8) is amended to clarify that random selection of holders to be examined does not apply to examinations in response to a complaint regarding a holder’s non-compliance with Ohio Revised Chapter 169.
- Sections (I)(6) and (J)(1) are amended to clarify that appeal of the examination findings is available to the holder at the completion of the closing review; and that the auditor, at the time of the closing review is required to inform the holder of the holder’s appeal rights and provide the holder with the state’s appeal form.
- Section (L)(2) is amended to clarify that the holder is not subject to an involuntary examination of the same types of unclaimed property for the reporting cycles covered in a prior involuntary examination.
- Section (M) is added to clarify that a holder is eligible to participate in a voluntary compliance program prior to being selected for an examination.

These amendments do not change the law or examination process, but they clarify law and practice already in effect.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** ORC §§ 119.03 and 169.09.
3. **Does the regulation implement a federal requirement?** No. **Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?** No. *If yes, please briefly explain the source and substance of the federal requirement.*

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4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This question does not apply to the rule under review.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?** Ohio Revised Code (ORC) §169.03(A) requires that: “[e]very holder of unclaimed funds . . . shall report to the director of commerce with respect to the unclaimed funds.” Holders are required to report annually to the Division of Unclaimed Funds (“Division”) pursuant to ORC §169.03, whether or not they have unclaimed monies to remit to the Division. Ohio law authorizes the Director of Commerce to “at reasonable times and upon reasonable notice, examine or cause to be examined, by auditors of supervisory departments or divisions of the state, the records of any holder to determine compliance” with ORC Chapter 169. ORC §169.03(F)(1). This rule sets out the examination process and the appeal process for the holders of unclaimed funds required to report to the Division.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The success of this regulation will be measured by a reduction in inquiries by holders regarding addressed aspects of the examination process. Each of the amendments is responsive to questions and inquiries from holders about the holder review and examination process, and the availability of the Division’s voluntary compliance program, expressed in recent years. The amendments are designed to provide clarification to assist holders participating in the examination process or seeking to participate in voluntary compliance.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio Credit Union League; Community Bankers’ Association of Ohio; Ohio Council of Retail Merchants; Ohio State Bar Association; Ohio Bankers’ League; National Federation of Independent Businesses; Ohio Manufacturers’ Association; Ohio Chamber of Commerce; and the Ohio Association of Realtors.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** None of the stakeholders objected to the agency’s proposed revisions during the drafting stage.

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9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

None. Not applicable.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

None. This is the only agency charged with collecting unclaimed funds, regulating holders with respect to the collection of unclaimed funds, and examining the records of holders related to unclaimed funds reporting. Further, this regulation is necessary to carry out the statutory mandates contained in ORC §§ 169.01, 169.02 and 169.03 with respect to holder reporting and to provide holders subject to regulation with information and guidance on the examination and appeal process.

11. **Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No. The requirements for holder reporting are mandated in Ohio Revised Code Chapter 169, including §§169.01, 169.02 and 169.03. The Ohio General Assembly expressly provided for regulation and oversight of holders through the examination process set out in ORC §169.03.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division of Unclaimed Funds is the only agency charged with collecting unclaimed funds, regulating holders with respect to the collection of unclaimed funds, and examining the records of holders related to unclaimed funds reporting. Therefore, no opportunity exists for duplication by other agencies or regulations outside of OAC Chapter 1301:10.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.** The rule and the procedures in place have been implemented for years. However, the rule is being amended to be response to inquiries raised by holders regarding the examination and voluntary compliance processes. The Division's Compliance Section, which administers the examination process and voluntary compliance program, will provide guidance to holders in writing and on the telephone. The staff will continue to be sensitive to the concerns and questions of holders and their representatives with respect to these procedures.

Adverse Impact to Business

14. **Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:** Due to the broad definition of "holder" in ORC 169.01(D) and the

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significant differences in business practices across holders and types of holders, it is not possible to provide an estimated cost of compliance among all such persons or entities. Issues related to and impacting the cost of internal accounting processes for these holders as it relates to unclaimed funds would vary significantly based on factors such as the type of business conducted by the holder, business operations and policies, number of unclaimed funds accounts nature or types of property (e.g., checks, wages, deposits, stock, dividends, etc.) and may other factors. Associated cost estimates could not be assessed or generalized across industries, or specifically compile due to the significant variety and volume of holders and the distinct nature of their businesses. However, computer software to assist holders in reporting unclaimed funds electronically is available at no cost, and the Division imposes no for filing the unclaimed funds reports.

- a. **Identify the scope of the impacted business community:** This rule applies to all “holders.” ORC §169.01(D) defines “holder” broadly to encompass a wide range of industries, public and private entities, companies and agencies. The revised rule imposes no new requirements, fees or penalties, makes no substantive changes to the reporting or examination processes, and places no new responsibilities on holders in either of these processes. It only provides information to explain current examination procedures and the availability of voluntary compliance, and is responsive to inquiries or questions raised by holders over time.
- b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** This rule sets out the process for the examination of holders as authorized in ORC §169.03. Businesses and other holders are therefore impacted by the examinations. The revised rule, however, imposes no new requirements, fees or penalties; makes no substantive changes to the reporting process; and places no new responsibilities on holders in either the reporting or examination processes. It only provides information to clarify current examination procedures and the availability of voluntary compliance, and is responsive to inquiries or questions raised by holders over time.
- c. **Quantify the expected adverse impact from the regulation.**
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact. Not applicable. See also above explanation in response to this question.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Ohio Department of Commerce Division of Unclaimed Funds is the sole agency in the State of Ohio charged with the collection, protection and payment of unclaimed funds to the rightful owners. ORC §169.03 authorizes the Division to examine the books of holders to carry out the responsibilities specified in ORC Chapter 169 with respect to the required

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reporting of unclaimed funds. The law also authorizes the adoption of rules to carry out this charge. Any adverse impact in the rule applies to all holders and derives from the reporting and regulatory mandates set out in ORC Chapter 169. The Department has sought to be continually responsive to holder questions regarding its reporting and examination processes, and the recommended amendments are in response to these holder inquiries.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. Small businesses, like any other business, organization, entity or person within the meaning of “holder” in ORC §169.01 must apply the mandated unclaimed funds reporting requirements contained in ORC Chapter 169. There are no exemptions or alternative means of compliance set forth in the statutes for small businesses. The Division, however, remains steadfastly sensitive to the inquiries and concerns raised by the regulated body. The recommended amendments result directly from issues or questions raised by this body in the five years since this rule was last reviewed.
- 17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?** The Division considers it a “first-time paperwork” violation eligible for waiver under ORC §119.14, when a holder has no unclaimed funds to report (commonly known as a “none report” of unclaimed funds). When unclaimed monies are required to be remitted with a report, the report does not qualify as a first-time paperwork violation under ORC §119.14. However, the Division has not imposed fines or penalties against holders for failure to report and remit unclaimed funds since the September 16, 2008 effective date of ORC §119.14, due to its long-standing, priority focus on obtaining holder compliance with reporting requirements by educating holders about the Unclaimed Property Act. Notwithstanding, fines and penalties authorized under ORC §169.12 may be assessed in egregious cases of persistent failure and refusal to report unclaimed funds due property owners as mandated by ORC §169.03.
- 18. What resources are available to assist small businesses with compliance of the regulation?** The Division’s Compliance Section annually sends information regarding the reporting of unclaimed funds to holders. The Compliance staff members are accessible through e-mail and telephone. In addition, information forms for holders are available on the Division’s website. Through the website, small businesses and other holders have 24-hour access to user-friendly reporting software, free of charge, to enable easy electronic filing of unclaimed funds reports